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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. KEITH ALAN HUNTER, Defendant and Appellant.	G039866 (Super. Ct. No. 06NF0810) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Keith Alan Hunter pleaded guilty to receiving stolen property. On appeal, he claims the court erred in denying his motion to suppress evidence. We affirm.

I

FACTS

Defendant offered the following facts as a basis for his guilty plea: "In Orange County, California, on 3/2/06, I unlawfully possessed a Visa debit card knowing it had been stolen. I also admit being convicted on 1/29/96 in Orange County case 96NFO135 of violating PC-459-460(a). I admit being convicted on 9/1/99 in Orange County case 99NF2287 of violating PC-261.5. In both cases, I was sentenced to state prison + upon release failed to remain free of prison custody for 5 years." The court found there was a sufficient factual basis and accepted the plea of guilty to violating Penal Code section 496, subdivision (a) as charged in count one of the information. (All statutory references are to the Penal Code.)

The court struck both of defendant's priors under section 667.5, subdivision (b), imposed the midterm sentence of 16 months in prison, and doubled the sentence pursuant to sections 667, subdivisions(d) and (e)(1). The total term imposed was two years eight months in prison.

Prior to pleading guilty, defendant moved to suppress evidence seized by the Anaheim police on March 2, 2006. The court conducted a hearing.

Alicia Galvan, is a detective with the Anaheim Police Department on the "tourist-oriented policing team." That team is "responsible for all the crimes that occur in and around Disneyland, the businesses and hotels." Prior to March 2, 2006, there was "a series of laptop thefts with different groups of people, particularly around that week we had had a male subject, male white subject, who had taken computers in the area. And we had been made aware of that." They had a copy of a photograph from a video

surveillance camera and a physical description of the suspect. "[H]e was a male white, somewhere in his 20s, early 30s. And he had tattoos on his arms."

On March 2, Galvan heard a broadcast regarding a possible suspect in the laptop thefts being seen on a skateboard southbound on Disneyland Drive wearing dark jeans, a T-shirt and carrying a rolled up newspaper or magazine in his back pants pocket. Galvan responded to the call. Galvan saw defendant on a skateboard wearing a T-shirt and jeans with a rolled up newspaper in his pocket and tattoos on his arms. His weight and height appeared to be in the same proportions to the weight and height of the suspect in the photograph.

Galvan told defendant, who was standing next to his skateboard, she needed to speak with him. Defendant looked around and whistled. Galvan was asked what she meant regarding the whistle. She explained: "He physically whistled, which to me was that's trying to alert somebody about me or let somebody know that I'm there." Defendant appeared to be agitated. When Galvan instructed defendant to show his hands, he did not comply at first. Galvan waited for another officer to come to the scene, and described the circumstances: "He walked toward me a little bit. I was concerned, so I ended up pulling out my handgun and pointed it at him and telling him to show me his hands." She said his demeanor frightened her and "his reaction to my contact with him . . . made me afraid."

When another officer arrived, Galvan "explained to him that [they] were stopping him because he had matched a description of something that had occurred in the area." She told him she "was going to check him and make sure he didn't have any weapons or anything on him." She didn't feel anything but a wallet on the patdown, and asked defendant if he had identification. He said he did not. Galvan asked defendant for permission to check his wallet to see if there was any identification in it, and defendant gave her permission to do so. At that point in the hearing, the defense attorney and the

prosecutor stipulated that "upon looking in the wallet the detective found the evidence that the defense" wanted suppressed.

At the conclusion of the hearing on the motion to suppress, the court ruled: "The initial detention of the defendant is reasonable, based on the factors presented here. The drawing of the weapon did not taint the subsequent consent as there were events that further dissipated that event. The defendant's consent, there is nothing to suggest that it was involuntary. [¶] The actions of the drawing of the weapon, as case law has held, does not per se hold that it results in an otherwise voluntary consent to be involuntary. I have heard of no other factors that would suggest that it was to the contrary. The search of the wallet was thus justified by consent and the suppression motion is denied."

Defendant now says the court erred in denying his motion to suppress evidence because his investigative detention was unreasonable and the detective failed to obtain knowing and intelligent consent from him before she searched his wallet.

II

DISCUSSION

Defendant contends the search was conducted without a warrant, and it is, therefore, presumptively invalid under the Fourth Amendment. The Attorney General states the detention was reasonable because it was supported by reasonable suspicion, and that defendant voluntarily consented to the search of his wallet.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.] (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

"[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from

those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances." (*Terry v. Ohio* (1968) 392 U.S. 1, 21, fns. omitted.)

The nature and extent of the governmental interests involved must be considered. (*Terry v. Ohio, supra,* 392 U.S. at p. 22.) "One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." (*Ibid.*)

Police officers may rely on information provided by other officers to detain someone for suspected criminal activity. (*People v. Madden* (1970) 2 Cal.3d 1017, 1021.) But the detention is reasonable only if the source from whom the detaining officer received the information had sufficient facts to justify the detention. (*People v. Aldridge* (1984) 35 Cal.3d 473, 478.)

Here defendant's appearance was similar to a surveillance photograph taken of a man suspected of stealing laptops. Galvan's detention of defendant was reasonable under these circumstances.

"A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the 'specifically established and well-delineated exceptions.' [Citations.] It is 'well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.'" (*People v. Woods* (1999) 21 Cal.4th 668, 674.)

Defendant claims he "was submitting to Detective Galvan's exhibition of authority." He says she drew her gun and "forcefully detained him" and that "between the exhibition of the firearm and the search of the wallet [defendant] could not possibly have . . . gained back his senses . . . and belief he had the ability and control to refuse consent to such a search."

"We decline to hold that as a matter of law, a consent to search is invalid solely because the officers originally drew their guns when confronting defendant." (*People v. Ratliff* (1986) 41 Cal.3d 675, 686.) With regard to Galvan's pointing her gun at him, defendant refused to show his hands, started toward her and appeared to be agitated. "American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. [¶] Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives." (*Terry v. Ohio, supra,* 392 U.S. at pp. 23-24, fn. omitted.) "Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [Citations.]" (*Id.* at p. 27, fn. omitted.)

Under these circumstances, Galvan was justified in pointing her gun at defendant for reasons that had nothing to do with whether or not he consented to a search. There is nothing in the record which would indicate defendant lost control of his senses or his ability to withhold consent. In considering and balancing all the circumstances,

there is substantial evidence in the record to lead a trier of fact to conclude defendant gave his consent freely and voluntarily.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.